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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON E. BENSON

:

CIVIL ACTION

V.

:

NO. 1:CV-00-1229

WILLIAM G. ELLIEN, M.D., et al.

:

(Judge Caldwell)
(Magistrate Judge Blewitt)FILED
SCRANTON

FEB 05 2001

RM

DEPUTY CLERK

BRIEF OF WILLIAM G. ELLIEN, M.D. IN SUPPORT OF HIS MOTION
TO STRIKE THE BRIEF OF DECEMBER 28, 2000 OF JASON E. BENSON
AS VIOLATIVE OF LOCAL RULE 7.7 OF THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

I. PROCEDURAL HISTORY

Jason E. Benson ("Benson") an inmate at the State Correctional Institution at Smithfield ("SCI-Smithfield") filed an amended complaint against several county prison officials alleging that they used unnecessary force upon him. In the same amended complaint he contends that William G. Ellien, M.D. ("Ellien"), a psychiatrist, and Ronald Long, M.D., a physician, provided inadequate medical care to him while he was incarcerated at SCI-Smithfield. Benson bases his claim against Ellien solely upon 42 U.S.C. §1983.

Ellien filed a motion to dismiss the amended complaint contending that Benson had not exhausted his administrative remedies as required by 42 U.S.C. §1997e(a). Ellien also sought dismissal of the amended complaint on a second separate ground; that Benson failed to allege that Ellien possessed subjective knowledge that his treatment of Benson presented a substantial risk of harm to Benson.

Benson submitted a response in which he admitted that he did not exhaust his administrative

remedies. Ellien submitted a reply brief on November 17, 2000.

Then, without leave of court, Benson submitted a second response to Ellien's motion to dismiss dated December 28, 2000.

II. STATEMENT OF THE FACTS

Ellien incorporates by reference as if set forth herein in full his procedural history of the case as the statement of facts.

III. STATEMENT OF THE QUESTIONS INVOLVED

Should Benson be permitted to file a second response to the motion to dismiss of Ellien after Ellien had already filed his reply brief when Benson never sought leave of Court in violation of Local Rule 7.7 of the United States District Court for the Middle District of Pennsylvania?

IV. ARGUMENT

Benson has submitted a second response to the motion to dismiss of Ellien after Ellien had already filed a reply brief on November 17, 2000 in support of his motion to dismiss. Benson already had the opportunity to respond. He made use of that opportunity.

Local Rule 7.7 of the United States District Court for the Middle District of Pennsylvania does not provide for any brief to be submitted after the reply brief presented by the party submitting the motion. Local Rule 7.7 states:

No further briefs may be filed without leave of court.

Benson never obtained leave of court. He now seeks to raise new issues that he never presented in his original response to the motion to dismiss of Ellien. Ellien has no opportunity to respond. This severely prejudices him. Benson has violated the rules without cause or reason. His

brief of December 28, 2000 should be stricken. The Court should not consider any of the issues raised therein if not previously raised in his original response to the motion to dismiss.

If the Court concludes that it should consider this second brief of Benson, Ellien should be given the opportunity to respond to it. No further briefing should be permitted on the motion to dismiss.

V. CONCLUSION

In the light of the foregoing William G. Ellien, M.D. respectfully requests that Jason E. Benson's response of December 28, 2000 be stricken.

BY: 

MONAGHAN & GOLD, P.C.

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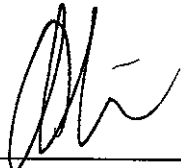
CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of defendant, William G. Ellien, M.D.'s Motion to Strike by First Class Regular Mail on this date to the following individuals:

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ALAN S. GOLD

DATE: 2/01/01